RESTOVED BESURATOE LEPARTMENT

BEFORE THE INSURANCE COMMISSIONER 2009 SEP - 1 PM 1:51 OF THE COMMONWEALTH OF PENNSYLVANIA ADMIN HEARINGS OFFICE

IN RE: : VIOLATIONS:

PROGRESSIVE CASUALTY : 40 Purdons Statutes, Sections INSURANCE COMPANY : 1171.4 and 1171.5(a)(1)(i)

6300 Wilson Mills Road :

Mayfield Village, OH 44143 : 75 Pennsylvania Consolidated

Statutes, Sections 1791.1(b) and

1793(b)

Respondent. : Docket No. CO09-07-023

CONSENT ORDER

AND NOW, this / st day of Saptember, 2009, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

- 1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.S. §101, et seq., or other applicable law.
- 2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in

in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, <u>supra</u>, or other applicable law.

3. Without admitting the allegations of fact and conclusions of law contained herein, Respondent specifically denies that it violated any law or regulation of the Commonwealth.

FINDINGS OF FACT

- 4. The Insurance Department finds true and correct each of the following Findings of Fact:
 - (a) Respondent is Progressive Casualty Insurance Company, and maintains its address at 6300 Wilson Mills Road, Mayfield Village, Ohio 44143.
 - (b) Respondent is a licensed insurer with the Pennsylvania Insurance Department and is domiciled in the state of Ohio, with EIN #34-6513736, NAIC ID #24260, and Company ID #8721.
 - (c) On January 11, 2008, the Department concluded a comprehensive market conduct examination of Respondent under Docket No. MC07-11-014, which findings included violations of Sections 4 and 5 of the Unfair Insurance

Practices Act (40 P.S. §§1171.4 and 1171.5), and various sections of Act 6 of 1990 (75 Pa.C.S. §§1791 and 1793).

- (d) On January 11, 2008, Respondent executed a Consent Order under Docket No. MC07-11-014, agreeing to cease and desist from the above violations of insurance law, and pay a penalty to the Commonwealth of Pennsylvania in settlement of all violations contained in the report.
- (e) Between January 11, 2008 and June 12, 2009, Respondent was found to be in violation of Act 6 of 1990, 75 Pa.C.S. §1791.1(b), which requires an insurer to provide an insured with a notice of the availability of two alternatives of full tort insurance and limited tort insurance at the time of application.
- (f) Between January 11, 2008 and June 12, 2009, Respondent was found to be in violation of Act 6 of 1990, 75 Pa.C.S. §1793(b), which requires the insurer to provide to the prospective insured a surcharge disclosure plan at the time of application.
- (g) As of June 12, 2009, Respondent was able to successfully implement a process that made it compliant with the form requirement provisions of Act 6 of 1990, 75 Pa.C.S. §§1791.1(b) and 1793(b).

CONCLUSIONS OF LAW

- 5. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department concludes and finds the following Conclusions of Law:
 - (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
 - (b) 40 Purdons Statutes, Section 1171.4, prohibits engaging in this Commonwealth in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to the Unfair Insurance Practices Act.
 - (c) Respondent's activities described above in paragraphs 4(e) and 4(f) constitute engaging in this Commonwealth in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to the Act and violate 40 Purdons Statutes, Section 1171.4.
 - (d) 40 Purdons Statutes, Section 1171.5(a)(1)(i) prohibits misrepresentation of the benefits, advantages, conditions or terms of any insurance policy.

- (e) Respondent's activities described above in paragraphs 4(e) and 4(f) constitute misrepresenting the benefits, advantages, conditions or terms of insurance policies and violate 40 Purdons Statutes, Section 1171.5(a)(1)(i).
- (f) Respondent's violations of 40 Purdons Statutes, Sections 1171.4 and 1171.5(a)(1)(i) are punishable by the following, under 40 Purdons Statutes, Sections 1171.8, 1171.9, and 1171.11:
 - (i) order requiring Respondent to cease and desist from engaging in such violation and/or, if such violation is a method of competition, act or practice defined in Section 5 of this Act, suspension or revocation of Respondent's license(s);
 - (ii) commencement of an action against Respondent for the following civil penalties:
 - (1) for each method of competition, act or practice defined in Section 5 and in violation of the Act which Respondent knew or reasonably should have known was such a violation, a penalty of not more than five thousand dollars (\$5,000.00) for each violation, not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) in any six month period;

- (2) for each method of competition, act or practice defined in Section 5 and in violation of this Act which Respondent did not know nor reasonably should have known was such a violation, a penalty of not more than one thousand dollars (\$1,000.00) for each violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000.00) in any six month period;
- (3) for each violation of an Order issued by the Commissioner pursuant to Section 9 of the Act, while such Order is in effect, a penalty of not more than ten thousand dollars (\$10,000.00).
- (g) 75 Pennsylvania Consolidated Statutes, Section 1791.1(b) requires an insurer to provide an insured with a notice of the availability of two alternatives of full tort insurance and limited tort insurance.
- (h) Respondent's activities described above in paragraphs 4(e) and 4(f) constitute failure to provide the notice of availability of two alternatives of full tort and limited tort insurance, in violation of 75 Pa.C.S. §1791.1(b).
- (i) 75 Pennsylvania Consolidated Statutes, Section 1793(b) requires the insurer to provide to the insured a surcharge disclosure plan. The insurer providing the surcharge disclosure plan shall detail the provisions of the plan and shall deliver the plan to each insured at least once annually. The surcharge information plan

information plan shall be given to each prospective insured at the time application is made for motor vehicle insurance coverage.

(j) Respondent's activities described above in paragraphs 4(e) and 4(f) constitute failure to provide to the insured a surcharge disclosure plan, in violation of 75 Pa.C.S. §1793(b).

ORDER

- 6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:
 - (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
 - (b) Respondent shall pay a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) to the Commonwealth of Pennsylvania. This penalty shall be made payable to the Commonwealth of Pennsylvania, and directed to Sharon L. Fraser, Bureau of Licensing and Enforcement, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment may be enclosed with the Consent Order, but must be paid in any event no later than thirty (30) days after the date of the Consent Order.

- 7. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.
- 8. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Insurance Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, <u>supra</u>, or other relevant provision of law.
- 9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.
- 10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

12. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or the duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized delegee.

BY: PROGRESSIVE CASUALTY INSURANCE COMPANY, Respondent

President / Vice President

Secretary / Treasurer

RONALD A. GALLAGHER, R. Deputy Insurance Commissioner Commonwealth of Pennsylvania